

Supreme Court, U. S.
FILED
JAN 26 1977

MICHAEL RODAK, JR., CLERK

A P P E N D I X

VOLUME I

**SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1976**

NO. 76-60

**DOLPH BRISCOE, GOVERNOR OF THE STATE
OF TEXAS AND MARK WHITE, SECRETARY
OF THE STATE OF TEXAS,**

Petitioners

V.

**EDWARD H. LEVI, ATTORNEY GENERAL
OF THE UNITED STATES, ET AL.,**

Respondents

**On Writ of Certiorari From The United States
District Court For The District Of Columbia**

**PETITION FOR WRIT OF CERTIORARI FILED
JULY 16, 1976**

CERTIORARI GRANTED DECEMBER 6, 1976

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NOTATION

The following items appear in appendices to the Petition for Certiorari at the pages noted and are not reproduced in this Appendix:

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RELEVANT DOCKET ENTRIES

1975

- Sept 08 COMPLAINT, appearance; Affidavit of Mark White; Exhibits A thru G.
- Sept 08 SUMMONS (6) & copies (6) of complaint issued: ser:
USA & #5 ser. 9-10-75; #3 & 4 ser. 9-11-75; #1 & 2 ser. 9-10-75.
- Sept 08 APPLICATION by pltfs. for Temporary Restraining Order; c/s 9-8-75.
- Sept 09 MEMORANDUM Brief by pltffs. in support of application for Temporary Restraining Order.
- Sept 11 MOTION by defts. to dismiss; memorandum of Federal Defts. in opposition to pltffs' motion for a preliminary injunction and in support of defts' motion to dismiss; Attachments 1, 2, 3, 4 & 5; Affidavit of Meyer Zitter w/exhibits 1 thru 6; c/m 9-11-75.
- Sept 11 MOTION by Ben Reyes, Paul Moreno, Gonzalo Barrientos, George (Mickey) Leland and Paul Ragsdale to intervene as defts.; P&A; Exhibit; c/m 9-11-75. \$5.00 paid and credited to the United States. Appearance of Abelardo I. Perez (1028 Conn. Ave., N.W. 20036, 659-5166).
- Sept 11 APPLICATION by pltffs. for Temporary Restraining Order; Supplemental P&A; c/s 9-12-75.
- Sept 12 MOTION of defts. to dismiss treated as a motion for summary judgment and application of Pltfs. for T.R.O. argued. Oral rul-

ing constituting Court's findings of fact & conclusions of law granting motion of defts. for summary judgment; dismissing the complaint & denying T.R.O. or any preliminary injunction.

(Rep. Ida Watson) Gesell, J.

- Sept 15 NOTICE of Appeal by pltffs. from final judgment of 9-12-75; \$5.00 paid and credited to the United States; copy sent to Cynthia Attwood.
- Sept 15 APPLICATION by pltff. for stay pending appeal; c/s 9-15-75.
- Sept 15 APPLICATION of Pltfs. for stay pending appeal Denied. (FIAT)
(N) Gesell, J.
- Sept 16 ORDER granting summary judgment for defts. and denying pltff's application for injunctive relief and dismissing complaint.
(N) Gesell, J.
- Sept 16 TRANSCRIPT of Proceedings of Sept. 12, 1975; pages 1-13; Rep. Ida Z. Watson; Pltffs copy.
- Sept 16 TRANSCRIPT of Proceedings of Sept. 12, 1975; pages 1-13; Rep. Ida Z. Watson; Court copy.
- Sept 16 RECORD on Appeal delivered to USCA; Receipt acknowledged. (USCA No. 75-1903)
- Sept 23 TRANSCRIPT of Proceedings of Sept. 12, 1975; pages 1-83; Rep. Ida Z. Watson; Court Copy.
- Sept 23 CERTIFIED copy of USCA order granting appellants' motion to dismiss application

for injunction pending appeal without prejudice.

- Sept 23 SUPPLEMENTAL record on appeal delivered to USCA; receipt acknowledged.
- Sept 26 STIPULATION that Pltff's Exhibits Nos. 1, 2, 3, 4 & 5 be transmitted to the USCA as a supplemental record on appeal.
APPROVED. (FIAT) Gesell, J.
- Sept 26 EXHIBITS Nos. 1, 2, 3, 4 & 5, by pltffs.
- Sept 29 NOTICE of Appeal by pltff. from judgment entered on Sept. 16, 1975; \$5.00 paid and credited to the United States; copy sent to Brian K. Landsberg, Dept. of Justice. (Appearance of Lonny F. Zwiener, Asst. Attorney General of Texas, P.O. Box 12548, Capitol Station, Austin, Tex. 78711).
- Sept 30 CASE reassigned from Judge Corcoran to Judge Gesell on 9-26-75.
- Oct 1 LEAVE to forward this notice to U.S. Court of Appeals to supplement record on appeal granted. (FIAT) Gesell, J.
- Oct 1 SUPPLEMENTAL Record on Appeal delivered to USCA; Receipt acknowledged.

(HEADING OMITTED)

PLAINTIFFS' ORIGINAL COMPLAINT

TO THE HONORABLE UNITED STATES
DISTRICT COURT:

NOW COME DOLPH BRISCOE, Governor of the State of Texas, and MARK WHITE, Secretary of State of the State of Texas, complaining of EDWARD H. LEVI, United States Attorney General; J. STANLEY POTTINGER, Assistant Attorney General; VINCENT P. BARABBA, Director of the United States Census; FREDERICK B. DENT, Secretary of Commerce of the United States; and THOMAS F. MCCORMICK, Public Printer, Government Printing Office, and for cause of action would show the following:

I.

This suit is brought seeking a declaratory judgment pursuant to Sections 2201 and 2202 of Title 28 of the United States Code. The matter in controversy exceeds the sum or value of \$10,000.00, exclusive of interest and costs, and arises under the law of the United States. Therefore, this Court has jurisdiction under Section 1331 of Title 28 of the United States Code.

II.

Plaintiff DOLPH BRISCOE is the duly elected and qualified Governor of the State of Texas charged generally with the execution of the laws of the State. Plaintiff MARK WHITE is Secretary of State of the State of Texas and is charged by statute as the Chief Election Officer of the State responsible for administration of the election laws generally throughout the State.

III.

The Voting Rights Act of 1965, (Public Law 89-110, 42 U.S.C. §1973, et seq.) was amended by the 94th Congress and those amendments were signed into law by the President of the United States in August of 1975 with the purported purpose of extending the provisions of the Act to certain State or political subdivisions of States which met various requirements or section 4(b) of the Act (28 U.S.C. §1973b). The amending language provides:

"On or after August 6, 1975, in addition to any State or political subdivision of a State determined to be subject to subsection (a) pursuant to the previous two sentences, the provisions of subsection (a) shall apply in any State or any political subdivision of a State which (i) the Attorney General determines maintained on November 1, 1972, any test or device, and with respect to which (ii) the Director of the Census determines that less than 50 per centum of the citizens of voting age were registered on November 1, 1972, or that less than 50 per centum of such persons voted in the Presidential election of November 1972."

The section further provides:

"A determination or certification of the Attorney General or of the Director of the Census under this section or under section 6 or section 13 shall not be reviewable in any court and shall be effective upon publication in the Federal Register."

IV.

On August 27, 1975, Defendant POTTINGER in his capacity as head of the Civil Rights Division of the Department of Justice and being the person charged by

the Attorney General with the responsibility for administering the Voting Rights Act of 1965, issued a press release in which he stated, as a fact, among other things, that the entire State of Texas is made subject to the Voting Rights Act. On August 28, 1975, and on many other occasions Plaintiff WHITE specifically requested of Defendant POTTINGER as well as of Defendant BARABBA and Defendant LEVI that the State of Texas be given a public hearing prior to official publication in the Federal Register of statistics regarding any possible inclusion of Texas under section 4 and 5 of the Voting Rights Act of 1965. While these Defendants and their subordinates have agreed to meet with Plaintiff WHITE informally, they have denied him a full and fair hearing and have refused to advise him specifically of any proper methods upon which they purport to determine that the entire State of Texas will be or should be incorporated under Sections 4 and 5 of the Voting Rights Act of 1965 pursuant to its 1975 amendments.

V.

Plaintiffs believe and hereby assert on information and belief that on November 1, 1972, more than 50 per cent of the *citizens* of the State of Texas of voting age were registered to vote and that of such persons more than 50 per cent voted in the Presidential election of November, 1972. Plaintiffs further advise and here allege that the Defendants do not have any statistics showing the number of citizens of voting age in the State of Texas on November 1, 1972, but intend to base their determinations under the Voting Rights Act of 1965 on estimates or guesses.

VI.

There is a justiciable controversy between Plaintiffs and Defendants as to whether or not the State of Texas

should be covered by the 1975 amendments to the Voting Rights Act of 1965. Specifically the question of coverage hinges upon the following issues which have never been answered by any court construing the Voting Rights Act of 1965:

(1) In making the determination required by section 4(b) of the Act, what character of evidence and how much evidence must the Bureau of the Census have before it, or, conversely, may its determination be made on the basis of guess and estimate?

(2) May the Bureau of the Census include in the determination of the number of "citizens of voting age" persons convicted of felonies but not pardoned, persons in the state for temporary purposes, persons not mentally competent, and aliens, either legal or illegal? Plaintiffs are advised and here allege on information and belief that the Bureau of the Census, in making its determination, intends to base it on the total residents in the State without reference to citizenship or qualifications under state law.

(3) To whom does the phrase "such persons" as used in subsection 4(b)(ii) refer? It is the demonstrated position of the Bureau of the Census that it need establish only that less than 50 per cent of the citizens of voting age did vote. Such a construction of Section 4(b) renders the first required determination stated in subsection 4(b)(ii) a nullity. The required determination that less than 50 per cent of the citizens of voting age were registered on November 1, 1972 becomes surplusage under such construction. It is the contention of Plaintiffs that the second determination required by subsection 4(b)(ii) requires the Bureau to prove that less than 50 per cent of those who were registered on November 1, 1972 did vote.

(4) No test or device, as that term was defined in the Voting Rights Act of 1965 as amended in 1970, existed

in Texas on November 1, 1972. In the 1975 amendments to the Voting Rights Act, Congress enlarged the definition of the term test or device and retroactively applied it to 1972. The amending language of Section 4(f) provides:

" (3) In addition to the meaning given the term under section 4(c), the term 'test or device' shall also mean any practice or requirement by which any State or political subdivision provided any registration or voting notices, forms, instructions, assistance, or other materials or information relating to the electoral process, including ballots, only in the English language, where the Director of the Census determines that more than five per centum of the citizens of voting age residing in such State or political subdivision are members of a single language minority. With respect to section 4(b), the term 'test or device', as defined in this subsection, shall be employed only in making the determinations under the third sentence of that subsection."

The implication of this new definition is to the effect that persons of Spanish heritage were prevented from participating in the elections process as a result of the states not making provision for assistance in the Spanish language to persons of Spanish heritage. Texas law, on every date in issue, has provided an appropriate remedy for those individuals of whatever nationality who are unable to read the English language. A directive of the Secretary of State, dated February 1, 1972 provides in part:

"No assistance shall be given a voter in preparing his ballot except when a voter is unable to prepare the same himself because of his inability to read the English language or because of some bodily infirmity, such as

renders him physically unable to write or to see. If the voter desires, he may select any qualified voter of the same precinct to assist him, in which event no other person, other than a watcher is allowed to be present while the ballot is being prepared.

"If the voter does not make his own selection of someone to assist him, two of the election officers must be present, while one of them renders the necessary assistance. In a general election, the two officers should be of different political parties if there are such officers serving at the election. Watchers may also be present while the ballot is being prepared."

May the new definition of the term test or device be retroactively applied to November 1, 1972?

(5) May the Bureau of the Census, as it contends, make its determinations as required by Section 4(b) in a session closed to the press, without sworn evidence, or should it be required to comply with some degree of procedural due process for the benefit of the citizens of the states and political subdivisions subjected to its inquiries?

(6) May the United States Attorney General make any determination under the provisions of Section 4(b) of the Voting Rights Act of 1965, as amended, that the State of Texas has engaged in the use of tests or devices for the purpose or with the effect of denying or abridging the right to vote on account of race or color, or in contravention of the guarantees set forth in section 4 (f)(2) of the Act in view of the conditions stated in Section 4(d) under which such determination shall not be made? If Section 4(d) is to be construed in a manner in which the 1975 amendments to the Voting Rights Act of 1965 will not constitute an improper exercise of Congressional

power, the Attorney General should not make the determination provided in Section 4(b) for the reason that any incidents of the use of the newly defined voting tests or devices and failure to conform to the guarantees set forth in section 4(f)(2) have only infrequently, if at all, been for the purpose or with the effect of denying or abridging the right to vote on account of race or color. Additionally and alternatively, the use of such tests or devices, and the failure to conform to the guarantees set forth in section 4(f)(2) of the Act have been few in number.

The Voting Rights Act of 1965, if made applicable to the State of Texas, will require the State to undergo an extensive examination by the Attorney General and/or this Court of voting procedures, district line changes, etc., made or adopted since 1972. The expense to the State will be far in excess of \$10,000.00 and will cause the State irreparable harm.

Plaintiffs would show that if the Court does not temporarily restrain and, upon hearing, temporarily enjoin the Defendants from publishing their so-called determination made pursuant to Section 4 (b) of the Act, Defendants will publish that determination finding the State of Texas to be covered when in fact it is not and that determination, under the terms of the Act, will not then be reviewable.

WHEREFORE, PREMISES CONSIDERED, Plaintiffs respectfully pray that this Court issue its order temporarily restraining the Defendants or any of them from publishing any determination concerning the State of Texas in the Federal Register pursuant to the provisions of section 4(b) of the Voting Rights Act of 1965 as amended in 1975; that the Court set for hearing Plaintiff's motion for a temporary injunction and that at such hearing it temporarily enjoin the Defendants and any of them from publishing such determination in the Federal Register pending a final disposition of this case;

and that upon final hearing hereof the Court enter its declaratory judgment determining how and under what circumstances the determinations called for by section 4(b) of the Voting Rights Act of 1965 should be made.

(Signatures Omitted)

THE STATE OF TEXAS)

COUNTY OF TRAVIS)

Before me, _____ a notary public in and for Travis County, Texas, on this day personally appeared Mark White, who being by me duly sworn upon oath says:

I, Mark White, Secretary of State of the State of Texas, am designated by the provisions of Article 1.03, Vernon's Texas Election Code, as the chief elections officer of the State of Texas and am charged with the responsibility to administer the state's election laws.

The 1975 amendments to the Voting Rights Act of 1965 require the United States Attorney General and the Director of the Census to make certain determinations before Sections 4 and 5 of the Act are applied to any state or political subdivision. Section 4(b) of the Act, as amended, provides, in part, as follows:

"On or after August 6, 1975, in addition to any State or political subdivision of a State determined to be subject to subsection (a) pursuant to the previous two sentences, the provisions of subsection (a) shall apply in any State or any political subdivision of a State which (i) the Attorney General determines maintained on November 1, 1972, any test or device, and with respect to which (ii) the Director of the Census determines that less than 50 percentum of the citizens of voting age were registered on November 1, 1972, or that

less than 50 percentum of such persons voted in the presidential election of November 1, 1972."

In order to carry out the duties placed upon me by state law and to protect the voting rights of every citizen of the State of Texas, I requested a hearing prior to the making of any of the determinations by either the Attorney General or the Director of the Census. The request was made in an effort to cooperate in good faith with the office of the United States Attorney General and the Bureau of the Census to bring pertinent information to their attention and also to make inquiry as to the techniques to be used.

On July 14, 1975, I wrote a letter to Dr. Vincent P. Barabba, Director of the Bureau of the Census, a copy of which is attached hereto as "Exhibit A" and incorporated herein for all pertinent purposes advising him that certain individuals are not eligible to vote in Texas and should not be included in his determinations required by Section 4(b), and, in addition, requesting that a hearing be held prior to the issuance and publication of any computations relating to voting age population and/or voter registration for the State of Texas. The request was not granted.

On July 21, 1975, I sent a communication through Western Union again requesting a hearing to determine voting age population of the state and stating that we have evidence which we believe bears directly on the issue and without which an accurate determination will not be possible. A copy of the communication is attached as "Exhibit B" and incorporated herein for all pertinent purposes. The request was not granted.

On August 7, 1975, I forwarded a communication to the Honorable Edward H. Levi, United States Attorney General, advising him that we possessed evidence which bears directly upon the question of whether the state maintained a test or device on November 1, 1972, and requesting an opportunity to be heard on the matter. A

copy is attached as "Exhibit C" and incorporated herein for all pertinent purposes. The request was not granted.

On August 27, 1975, Governor Dolph Briscoe received a communication from Vincent Barabba, a copy of which is attached as "Exhibit D" and incorporated herein for all pertinent purposes, stating that determinations had been made and "released" by the Census Bureau showing that "Texas is required to provide special assistance to minority voters in jurisdiction with responsibility under 1975 amendments, will be advertised in an early issue of the Federal Register."

On August 28, 1975, I wrote identical letter, copies of which are attached hereto as "Exhibit E" and incorporated herein for all pertinent purposes to Mr. Stanley Pottinger, Department of Justice, Honorable Edward H. Levi, United States Attorney General, and Dr. Vincent Barabba, Director, Bureau of the Census, requesting a public hearing prior to official publication in the Federal Register of statistics regarding the possible inclusion of Texas under Sections 4 and 5 of the Voting Rights Act of 1965, as amended. Further, I advised them that population figures newly compiled indicate that more than 50% of the citizens of voting age were registered in Texas on November 1, 1972 and that more than 50% of such persons voted in November, 1972. In addition, I advised that Texas wishes to inquire as to the methodology used in their determinations so that all affected parties may be assured of the accuracy of those determinations.

On September 2, 1975, a telegram was received from J. Stanley Pottinger, Department of Justice, which states that the Director of the Bureau of the Census wishes to "provide you with the opportunity you request to provide any data and supporting documentation relevant to his determination. The statute does not

provide for a formal hearing process, but your data will be received and considered fully and fairly."

Immediately, I contacted the Bureau of the Census personnel to set up such a meeting and it was scheduled for September 5, 1975. On September 4, 1975, the Bureau of the Census issued a press release stating their determinations had already been made, thereby denying the full and fair consideration of data which had been promised. The meeting scheduled for September 5, 1975, was held, at which time representatives of the Bureau of the Census reconfirmed that illegal aliens are in fact included in their determinations of citizens of voting age. In addition, they reconfirmed that other persons, although not eligible citizens for voting purposes, to-wit, convicted but unpardoned felons, were included within their computation along with lunatics, military personnel and students temporarily residing in Texas but who voted in their home states. All of these factors inaccurately reflect the citizens of voting age residing in Texas.

At the meeting on September 5, 1975, representatives of the Bureau of the Census indicated that under their interpretation of Section 4(b), that the first half of the statement under (ii), whereby the Director of the Census determines that "less than 50 per centum of the citizens of voting age were registered on November 1, 1972," is uniformly ignored, that they do not use that provision for any purpose and that it is, in fact, superfluous for any purpose. The only part of the (ii) portion of the sentence they enforce or utilize is that portion which states "or that less than 50 per centum of such persons voted in the presidential election of November, 1972." It was stated at the meeting that it is their interpretation that the words "such persons" refers to citizens of voting age rather than to those persons who are registered on November 1, 1972, and, thus, eligible to vote in Texas.

It appears that the figures upon which the Bureau of the Census bases its projections to November 1, 1972 are the 1970 Census figures which, on their face, and admittedly, include many within categories of disqualified persons, i.e., illegal aliens, convicted felons who have not been pardoned, lunatics, and non-residents temporarily residing in Texas. There are as many as 1,000 illegal aliens in Texas according to a statement by Leonard F. Chapman, Jr., Commissioner, Immigration and Naturalization Service, on January, 21, 1975.

The Bureau of Census, upon advice from the Department of Justice, will utilize April 1, 1970 figures for purposes of determining if on November 1, 1972 more than five per cent of the citizens of voting age were members of a single language minority. A copy of a letter from J. Stanley Pottinger to Dr. Vincent Barabba of August 5, 1975, is attached hereto as "Exhibit F" and incorporated herein for all pertinent purposes.

On page 7 of the letter, paragraph (iii)(f), is stated:

"Although the Act gives no specific date as of which the five percent determinations are to be made, it is our understanding that the Bureau will have to make these determinations as of April 1, 1970, because of the limitations of the data available."

On the other hand, on page 4, paragraph (iii)(g), Mr. Pottinger states:

"Although the Act requires the five percent determinations to be made as of November 1, 1972, it is our understanding that Census will have to make these determinations as of April 1, 1970, because of the limitations of the data available."

The decision to rely upon 1970 census figures in one instance and 1972 figures in another is arbitrary in every sense except that such reliance tends to dictate results under which Sections 4 and 5 of the Act would apply to Texas and other states. Consequently, it appears that the Justice Department and Bureau of the Census are deliberately and arbitrarily selecting figures contrary to law. The State of Texas was promised that a full and fair hearing would be conducted; but the conduct of the Civil Rights Division of the Department of Justice and Bureau of Census conclusively demonstrate an intent to do otherwise.

The terms of the 1975 amendments render it impermissible for the Attorney General to make the determination triggering coverage of the State of Texas by Sections 4 and 5 of the Act. Section 4(d) of the Act states:

"For purposes of this section no State or political subdivision shall be determined to have engaged in the use of tests or devices for the purpose or with the effect of denying or abridging the right to vote on account of race or color, or in contravention of the guarantees set forth in section 4(f)(2) if (1) incidents of such use have been few in number and have been promptly and effectively corrected by State or local action, (2) the continuing effect of such incidents has been eliminated, and (3) there is no reasonable probability of their recurrence in the future."

Incidents of the use of any voting test or device, if any, on account of race or color, or in contravention of the guarantees set forth in section 4(f)(2) of the Act have been few in number. As chief election officer, no such use has ever been brought to my attention and I know of

no such use. Elections which have been held in Texas wherein all election materials were printed in the English language have not been used by the State of Texas with the purpose or effect of denying or abridging the right to vote on account of race or color. The evidence is overwhelming that no such purpose or effect has resulted from any action of Texas. By virtue of a Directive of the Secretary of State in February of 1972, any person who is unable to read the ballot may seek and obtain instructions and assistance in preparing the ballot, either from an elections official or from some volunteer the voter brings into the polling place for that purpose. In sharp contrast to the story told by the statistics relating to the states originally covered by the Voting Rights Act of 1965 (at which time there was no evidence to cover Texas), the relevant statistics based on 1970 census figures, show that persons of Spanish origin or descent register and vote in numbers roughly corresponding to their portion of the total population in the various areas of the state. In those counties containing over 50 per cent persons of Spanish surname, 72 per cent were registered for the 1974 general election. In those counties containing under 5 per cent persons of Spanish surname, 79 per cent were registered for the 1974 general election. The statewide average was 75 per cent. In those counties containing over 50 per cent persons of Spanish surname, 22.73 per cent voted in the 1974 general election. In those counties containing under 5 per cent persons of Spanish surname, 23.18 per cent voted in the 1974 general election. The difference in voter turn-out in high Spanish surname vs. low Spanish surname counties, therefore, was .45 of one per cent. By the logic under which the 1965 Act was originally applied to states of the Old South, a low voter turn-out was presumed to be the result of an almost total lack of participation by the particular minority population. That presumption is refuted in the Texas case and Section 4(d) of the Act

states that the determination of coverage should not be made in Texas' case because it is demonstrable that the supposed "test or device" was not used with the evil purpose or effect with respect to persons of the particular language minority.

The Department of Justice has, this year, in testimony by J. Stanley Pottinger, before Congress stated that evidence does not exist to justify inclusion of Texas within the coverage of the Act. J. Stanley Pottinger, on April 29, 1975, in a statement before the Subcommittee on Constitutional Rights of the Senate Judiciary Committee could not have stated it with more clarity:

"in light of the other remedies available and in light of the stringent nature of the special provisions, the Department of Justice has concluded that the evidence does not require expansion based on the record currently before us."

The Department of Justice, in September of 1975, should not be able to contend that a voting "test or device" has frequently been used in Texas for the purpose of denying or abridging the right to vote on account of race or color. Section 4(d) of the Act states that the Attorney General shall not make such a determination in light of the facts admitted by Mr. Pottinger.

To the extent that a test or device has been utilized, its use had been so infrequent that such use had not been brought to the attention of my office. To the extent that there has been some proscribed use of a test or device under the new definition, it has surely been properly and effectively corrected by the passage and immediate implementation of Senate Bill 165, 64th Legislature, 1975, a copy of which is attached as "Exhibit G", and

incorporated herein for all pertinent purposes. S.B. 165, requires the use of Spanish language elections materials and ballot translations in every polling place where there is 5 per cent or more population of Spanish origin or descent. S.B. 165 was passed and was in effect before the passage of the 1975 amendments to the Voting Rights Act of 1965 and the origins of the bill can be traced to a time before the idea was generally circulated that an English only election in Texas could possibly constitute a "voting test or device" within the meaning of the Voting Rights Act of 1965. Certainly there is no reasonable probability of the recurrence of English only elections in Texas in any area wherein there resides more than 5 per cent persons of Spanish origin or descent. Texas law prohibits it.

STATE OF TEXAS)	By S/S _____
)	Mark White,
COUNTY OF TRAVIS)	Secretary of State

I, _____, a Notary Public, do hereby certify that on this _____ day of _____, 19____, personally appeared before me Mark White being duly sworn, declared that he is the Secretary of State, that he signed the foregoing document in the capacity therein set forth, and that the statements therein contained are true and correct.

IN WITNESS WHEREOF, I have hereunto set my hand and seal the day and year before written.

By S/S _____
Notary Public in and for
_____, County, _____
My commission expires: _____

July 14, 1975

Dr. Vincent P. Barrabba
Director
Bureau of Census
Washington, D.C. 20501

Dear Director:

I have been advised this date by members of the staff of the Bureau of Census that you are in the process of creating the numbers that would pertain to Texas and other political subdivisions affected by the 1975 amendments to the Voting Rights Act. The enclosed Constitutional and statutory provisions concerning those individuals who are not eligible to vote in Texas are germane to the decision you may be called upon to make concerning the voting age population of our State. Persons of unsound mind, convicted felons and all aliens are not permitted to vote in Texas, and therefore, I feel should not be included in computing the voting age population for Texas. I will be most happy to procure statistical support for the actual numbers of individuals affected by these prohibitions.

Also, let me assure you of the continuing assistance of our office in developing any voter registration figures which you may desire. The Office of Secretary of State has not compiled a voter registration total for the date, November 1, 1972, and therefore, some time would be required by our office to bring accurate information to you for inclusion in your computations.

Also, let this letter serve as our official request to appear and be heard prior to the issuance and publication in the Federal Register of any computations relating to voting age population and/or voter registration, as those figures might pertain to Texas.

I trust that the Bureau of Census shares my concern that whatever figures are in fact created, that they be accurate in every respect. I shall happily assist you and your office in every manner possible to achieve a high degree of accuracy in your computations.

Please advise me of whatever procedures need be followed in order to bring these most important matters before you in the most efficient manner.

Sincerely yours,

Mark White
Secretary of State

MW:m

Enclosure

(Exhibit A)

Western Union

Telefax

Call		Charge	SECRETARY
Letters	FFH	To	OF STATE

Mr. Vincent P. Barabba	[Personal Del. Report]
Director of the Census	[Delivery Report]
Bureau of the Census	
Department of Commerce	
Washington, D.C. 20236	

The State of Texas requests a hearing to determine voting age population of the state pursuant to 42 U.S.C. 1973b. We have evidence available which we believe bears directly on the issue and without which an accurate determination will not be possible. Please advise at your earliest convenience of the setting of a hearing and the proper procedures for submission of evidence.

Mark White
Secretary of State,
State of Texas

Western Union

Telefax

08018 Collect Washington DC 07-21 1128 EDT
PMS Mark White, Secretary of State, State of Texas
ASKG RD Y2 1-0312231202 1657 01104 07-21 250P
CDT AUSTIN TX

Your Telegram To Vincent P. Baraba Bur. of Census
Dept of Commerce, Wash DC was delivered 1125P EDT
Jul 21 Via Tlx Western Union.

(Exhibit B)

August 7, 1975

The Honorable Edward H. Levi
United States Attorney General
Department of Justice
Constitution Avenue & 10th St., N.W.
Washington, D. C. 20530

Dear General Levi:

As you are aware, Section 4(b) of the Voting Rights Act of 1965, as amended in 1975, provides that the application of the Act shall be extended to any state or political subdivision for which the Director of the Census determines that less than 50% of the citizens of voting age were registered on November 1, 1972 or that less than 50% of such persons voted in November of 1972, and which the Attorney General determines maintained a test or device on November 1, 1972.

The State of Texas possesses evidence which bears directly upon the question of whether the state maintained a test or device on November 1, 1972. In order that you may have benefit of this evidence prior to making the determination required by the Act; the State of Texas respectfully requests the opportunity to appear and be heard on this matter.

Please advise me of the procedures that need to be followed in order that the State of Texas may be granted a hearing prior to your determination.

Sincerely yours,

BY S/S
Mark White
Secretary of State

MW:lkc

(Exhibit C)

Western Union Mailgram
MGMSNTT HSA
1-028921C239 08/27/75
1-028921C239 08/27/75
TLX CENSUS BUR WSH
008 WASHINGTON D C AUGUST 27
ZIP 78711

Governor Dolph Briscoe
State Capitol
Austin, Texas 78711

Statistical Determinations made under the 1975 Amendments to the Voting Rights Act (Public Law 94-73) and released today by Census Bureau show that Texas is required to provide special assistant to minority voters in 1975 fall elections. Additional details and a list of jurisdictions with responsibility under 1975 amendments will be advertised in an early issue of the Federal Register, for interim information call member of my staff at 301-763-5072.

Vincent Barabba
Director
Bureau of the Census

15:17 EST

MGMSNTT HSA

(Exhibit D)

STATE OF TEXAS
OFFICE OF THE SECRETARY OF STATE
AUSTIN, TEXAS 78711
August 28, 1975

Mark White Bruce Hughes
Secretary of State Asst. Secretary of State

Mr. Stanley Pottinger
Department of Justice
Constitution Avenue & 10th St., N.W.
Washington, D. C. 20530

Dear Mr. Pottinger:

The State of Texas requests a public hearing prior to official publication in the Federal Register of statistics regarding the possible inclusion of Texas under Sections 4 and 5 of the Voting Rights Act of 1965, as amended.

Population figures newly compiled indicate that more than 50% of the citizens of voting age were registered in Texas on November 1, 1972 and that more than 50% of such persons voted in November, 1972. In addition, Texas wishes to inquire as to the methodology used in your determinations so that all affected parties may be assured of the accuracy of those determinations.

Please notify me of the setting of a public hearing to present this evidence for your consideration.

Sincerely yours,

BY S/S
Mark White
Secretary of State of Texas

(Exhibit E)

STATE OF TEXAS
OFFICE OF THE SECRETARY OF STATE
AUSTIN, TEXAS 78711

August 28, 1975

Mark White Bruce Hughes
Secretary of State Asst. Secretary of State

The Honorable Edward H. Levi
United States Attorney General
Department of Justice
Constitution Avenue & 10th St., N.W.
Washington, D. C. 20530

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Please notify me of the setting of a public hearing to present this evidence for your consideration.

Sincerely yours,

BY S/S
Mark White
Secretary of State of Texas

(Exhibit E)

STATE OF TEXAS
OFFICE OF THE SECRETARY OF STATE
AUSTIN, TEXAS 78711

August 28, 1975

Mark White Bruce Hughes
Secretary of State Asst. Secretary of State

Dr. Vincent P. Barabba
Director
Bureau of Census
Washington, D. C. 20501

Dear Dr. Barabba:

The State of Texas requests a public hearing prior to official publication in the Federal Register of statistics regarding the possible inclusion of Texas under Sections 4 and 5 of the Voting Rights Act of 1965, as amended.

Population figures newly compiled indicate that more than 50% of the citizens of voting age were registered in Texas on November 1, 1972 and that more than 50% of such persons voted in November, 1972. In addition, Texas wishes to inquire as to the methodology used in your determinations so that all affected parties may be assured of the accuracy of those determinations.

Please notify me of the setting of a public hearing to present this evidence for your consideration.

Sincerely yours,

BY S/S
Mark White
Secretary of State of Texas

(Exhibit E)

Department of Justice
Washington, D.C. 20530

Aug 5 1975

Mr. Vincent P. Barabba
Director, Bureau of the Census
Washington, D.C.

Dear Mr. Barabba:

At my meeting with Meyer Zitter, Chief of your Population Division, on July 28, 1975, we agreed that the Department of Justice would provide the Bureau of the Census with certain information and direction regarding the determinations to be made by the Bureau pursuant to the Voting Rights Act Amendments of 1975. This letter is intended to provide that information and to amplify, and in some instances correct, the information contained in our memorandum of July 28, 1975:

A. Title II requires the Census to determine those states and political subdivisions in which: i) on November 1, 1972, more than five percent of the citizens of voting age were members of a single language minority (Sec. 202, 203);¹ and ii) on November 1, 1972, less than 50 percent of the citizens of voting age were registered, or less than 50 percent of such persons voted in the Presidential election of November, 1972 (Sec. 202). Title II also requires the Attorney General to determine which jurisdictions with more than five percent citizens of voting age who are members of a language minority maintained English-only elections, as defined by Section 203, on November 1, 1972.

¹Defined as persons who are American Indian, Asian American, Alaskan Natives or of Spanish heritage.
(Sec. 207)

(Exhibit F)

i) As we agreed at our meeting on July 28, the most appropriate chronology of events would be for the Attorney General to make his determinations after the Director of the Census makes his.

ii) In order to make the required determinations the Bureau needs a description of what constitutes a "political subdivision" within the meaning of the Act in every state. A list by state is attached to this letter.

iii) There are several ambiguities in the Bureau's requirement to determine which jurisdictions had more than five percent citizens of voting age who were members of a single language minority. These ambiguities have been resolved by us in ways which we believe are consistent with the letter and intent of the Act, which do not infringe upon the right to vote, and which at the same time promote administrative convenience.

(a) The act does not define the term "Asian American." The legislative history indicates that the Bureau is to count only persons who are identified as Korean, Chinese, Japanese, and Phillipino as "Asian American." Rep. Don Edwards, Cong. Rec. H. 4716, June 2, 1975. In addition, it is our understanding that for purposes of the November 1972 determination statistical information is readily available to the Bureau regarding these four Asian subgroups, but is not available regarding other Asian subgroups, such as Vietnamese, or Burmese. Therefore, for purposes of the Title II determinations, the Bureau should only count Koreans, Chinese, Japanese, and Phillipinos.

(b) The Act does not indicate what subgroups constitute the category "Alaskan Natives." The legislative history indicates that three groups of native Alaskans, Aleuts, Eskimos, and American Indians residing in Alaska should be counted as "Native Alaskans." Rep. Don Edwards, Cong. Rec. H. 4716, June 2, 1975. For purposes of the Title II determinations, the

Bureau should count persons in these three subgroups as "Alaskan Natives."

(c) The Act does not define the term "American Indian." The legislative history indicates that persons who either identified themselves in the Census as American Indian, or who indicated membership in an American Indian tribe, are to be counted as "American Indian." Rep Don Edwards, Cong. Rec. H. 4716, June 2, 1975.

(d) The Act does not define the term "persons of Spanish heritage." The legislative history indicates that the Director of the Census is to identify such persons as: "persons of Spanish language" in 42 states and the District of Columbia; "persons of Spanish language," as well as "persons of Spanish surname" in Arizona, California, Colorado, New Mexico, and Texas; and persons of Puerto Rican birth or parentage" in New Jersey, New York, and Pennsylvania. Rep. Don Edwards, Cong. Rec. H. 4716, June 2, 1975.

(e) The Act does not indicate whether the Director of the Census is to aggregate subgroups within the Asian American, American Indian, and Native Alaskan categories in order to determine whether five percent of the population in a jurisdiction belong to one of the "single language minority" groups. The language of the Act itself, read in light of the overall purpose of the Act, leads to the conclusion that if there is any ambiguity on this point, it ought to be resolved in the following manner: i) In order to determine whether a jurisdiction has greater than five percent Asian American citizens of voting age, the Director of the Census should *not* aggregate the four Asian American subgroups (see (a) above). This means that if a jurisdiction is to meet the five percent requirement, because of its Asian

American population, it must have greater than five percent of at least one of the Asian subgroups. ii) However, in determining whether a jurisdiction meets the five percent requirement because of its Alaskan Native or American Indian population, the Director of the Census should aggregate all persons who fall within any of the identifiable subgroups. In other words, in counting Alaskan Natives, the Director should add Aleuts, Eskimos and American Indians residing in Alaska; and in counting American Indians, the Director should add all persons who indicate they are American Indian or who report affiliation with an American Indian tribe regardless of tribe.

(f) The Act provides that the Director of the Census is not to aggregate members of the four distinct language minority groups in making his determinations under Title II. Thus, if a jurisdiction contains 3 percent voting age citizen Asian Americans and 3 percent voting age citizen persons of Spanish heritage it would not meet the five percent requirement of Title II.

(g) Although the Act requires the five percent determinations to be made as of November 1, 1972, it is our understanding that Census will have to make these determinations as of April 1, 1970, because of the limitations of the data available.

B. Title III requires the Director of the Census to determine those states and political subdivisions in which: i) more than five percent of the citizens of voting age are members of a single language minority (defined as in Title II); where ii) the illiteracy rate of such persons as a group is higher than the nationwide illiteracy rate (Sec. 301). Political subdivisions within any state triggered by this formula, but in which the language minority group which triggered statewide coverage

represents less than five percent of the voting age citizen population of the political subdivision, are not triggered by Title III (Sec. 301). "Illiteracy" is defined as failure to complete the fifth primary grade. (Sec. 301).

i) The Attorney General does not make any determinations under Title III, so that jurisdictions are covered by the Title upon the Director's publication of his determinations in the Federal Register.

ii) "Political subdivision" is defined under Title III the same as under Title II (see attached list by state).

iii) Ambiguities in Title III have been resolved (consistent with the letter and intent of the Act) as follows:

(a) "American Indian," "Alaskan Native," and "persons of Spanish heritage" shall be defined as they are for purposes of Title II (see A(iii)(b)-(d) above).

(b) "Asian American" shall be defined as it is for purposes of Title II (see A(iii)(a)), for purposes of the initial determination of coverage under Title III. If, at a future time, the Bureau has readily available statistics on any other Asian subgroup, such as Vietnamese, or Burmese, the Director should then request of the Attorney General which of these subgroups are to be included within the definition of "Asian American" for purposes of future determinations under Title III.²

(c) In determining whether a jurisdiction meets the five percent requirement of Title III, the Bureau should apply the same instructions as in Title II regarding aggregation or nonaggregation of subgroups of language minority groups (see A(iii)(e) above).

² The Bureau of the Census will be required to make new determinations of coverage under Title III when statistics on the 1980 census are available.

(d) As with Title II, the Bureau should not aggregate members of the four distinct language minority groups in making the five percent determination (see A(iii)(f) above).

(e) The language of the Act itself, read in light of the overall purpose of the Act leads to the conclusion that the illiteracy requirement of the trigger of Title III should be determined as follows: i) The plain meaning of Title III indicates that the Director of the Census should compute the nationwide illiteracy rate based upon voting age citizens (see Senate Report on S. 1279, p.39). ii) The illiteracy rate which the Bureau is to compute to compare with the nationwide illiteracy rate should be the illiteracy rate for voting age citizens of the group or groups which meet the five percent requirement only. Thus, if a jurisdiction has over five percent Chinese, one percent Japanese, and over five percent persons of Spanish heritage, the Director should compute illiteracy rates only for Chinese and persons of Spanish heritage. If the illiteracy rate for Chinese or persons of Spanish heritage in the jurisdiction is greater than the nationwide illiteracy rate, the jurisdiction would then be subject to the requirements of the Title as to that group. (Of course, the jurisdiction might be covered as to both groups if their illiteracy rates are both above the nationwide figure). However, the jurisdiction would not under this hypothetical be subject to any requirements as to the Japanese population, as there are less than five percent Japanese citizens of voting age (see A(iii)(e)). The following list will clarify any confusion on this point:

If there are more than five percent citizens of voting age who are

Alaskan	_____	Alaskan
Natives	,	Natives
American	<i>The Bureau</i>	American
Indians	<i>should deter-</i>	Indians
Chinese	<i>mine the il-</i>	Chinese
	<i>literacy rate</i>	
	<i>- in that juris-</i>	
	<i>diction of</i>	
Japanese	_____	Japanese
Korean	_____	Korean
Phillipino	_____	Phillipino
Persons of		Persons of
Spanish	_____	Spanish
Heritage		Heritage

(f) Although the Act gives no specific date as of which the five percent determinations are to be made, it is our understanding that the Bureau will have to make these determinations as of April 1, 1970, because of the limitations of the data available.

C. Attached is a list of states in which elections are scheduled this fall. The first priority of the Bureau of the Census should be to make Title II and III determination for those states which have elections coming up. Thereafter, determinations as to all other states should be made as quickly as possible.

D. It is our understanding that the Bureau of the Census will develop a method of resolving statistically marginal determinations. It would, of course, be appropriate to delay any determinations which are statistically questionable in order to make a special canvas in those areas which are marginal.

I hope that this letter addresses those issues which have been outstanding regarding the responsibilities of the Bureau of the Census under Titles II and III. We will be happy to deal with any additional questions that arise. So that we may carry out our responsibilities under the Act, please provide us with your estimate of the length of time which will be required by the Bureau to complete its determinations under Titles II and III. Thank you for the Bureau's cooperation and assistance.

Sincerely,

BY S/S
J. Stanley Pottinger
Assistant Attorney General
Civil Rights Division

(Exhibit F)

AN ACT

requiring use of bilingual election materials and voter registration material in English and Spanish in certain areas and permitting use of the bilingual materials in other areas; amending the Texas Election Code by adding Sections 8a and .45c; and declaring an emergency.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

Section 1. The Texas Election Code is amended by adding Section 8a to read as follows:

"8a. Bilingual election materials in English and Spanish.

"Subdivision 1. Elections and areas in which bilingual materials are required. (a) In every general, special, or primary election, by whatever authority held, which is held within a county in which five percent or more of the inhabitants are persons of Spanish origin or descent, according to the federal census specified in Paragraph (b) of this subdivision, the election materials enumerated in Subdivision 3 of this section shall be printed in both English and Spanish for use at the polling place in each election precinct that is not exempt from this requirement under Subdivision 2. In the elections of a political subdivision that includes territory in more than one county, the bilingual materials must be used in each precinct that includes territory lying within a county to which this subdivision applies unless the precinct is exempt under Subdivision 2.

"(b) The census used for determining the percentage of persons of Spanish origin or descent is the last

(Exhibit G)

preceding federal decennial census for which the enumeration date was more than two years before January 1 of the calendar year in which the election is held.

"Subdivision 2. Election precincts exempt from requirement. (a) An election precinct situated in a county to which Subdivision 1 applies is exempt from the requirement for bilingual election materials if official census information or other information shows that persons of Spanish origin or descent comprise less than five percent of the inhabitants of the precinct. The authority holding the election has the burden of establishing entitlement to the exemption. Unless otherwise ordered by a court of competent jurisdiction, the officer or body responsible for obtaining the supplies for the election is relieved of the duty to furnish bilingual materials for those precincts for which there has been filed with the clerk or secretary of the political subdivision responsible for the expenses of the election, at least 30 days before the date of the election, a certificate executed by the presiding officer of the governing body of the political subdivision and approved by the governing body, identifying the precinct or precincts for which the exemption is claimed, together with an abstract of the official census information or other information relied on to support the exemption and a map or maps showing the precinct boundaries and the boundaries of the census enumeration areas referred to in the abstract. An authenticated copy of the resolution or other document evidencing the governing body's approval must be filed with the certificate.

"(b) A new certificate and new supporting information must be filed following each decennial census. The supporting information must be revised following a change in election precinct boundaries, and

a revised certificate must be filed if the certificate on file no longer correctly reflects the exempt precincts.

"(c) In the case of a primary election held by a political party, the exempt precincts are those reflected in a certificate executed by the county judge or the secretary of state and filed in the office of the county clerk. The secretary of state is authorized to file a certificate for a county whenever the county judge has not filed a certificate by the 60th day before the date of the primary or whenever the certificate on file does not correctly reflect the exempt precincts.

"Subdivision 3. Enumeration of required bilingual materials; preparation of the materials. (a) At each polling place where election materials in English and Spanish are required, the following materials shall be provided in bilingual form:

"(1) Instruction cards for the information of voters shall be printed in both English and Spanish, either on separate cards to be posted side by side or on the same card with the Spanish text alongside the English text.

"(2) Where voting machines or voting devices are used, a Spanish translation of the instructions for operating the machines or devices shall be posted in the compartment or booth that the voter occupies.

"(3) All ballots and ballot labels may be printed with all ballot instructions, office titles, and propositions appearing in both Spanish and English. If the bilingual listing on the face of the ballot is not utilized, then a Spanish translation of the ballot shall be posted in each compartment or booth, and a statement shall be placed on the face of the ballot in Spanish to inform the voter that the Spanish translation is posted in the compartment or booth; and where paper ballots are used and booths are not provided for all voters, copies of

the Spanish translation shall also be made available at the table where the voter selects his ballot, and a sign printed in Spanish shall be displayed at the table, informing the voter that he may take a copy of the Spanish translation for his use in preparing his ballot.

"(4) All affidavit forms or other forms that voters are required to sign may have a Spanish translation printed beneath the English text or on the reverse side of the printed matter appearing on the form. If this translation is not utilized, then a Spanish translation of the affidavit shall be made available, and a statement shall be placed on the affidavit in Spanish that a Spanish translation is available upon request.

"(b) The secretary of state shall prepare the Spanish translation for all bilingual materials required by Subdivisions 3 and 4 of this section, except ballot forms for local elections. The secretary of state shall prepare the Spanish translation of the ballot propositions for proposed constitutional amendments and other measures submitted by the legislature if the legislature fails to provide a Spanish text. The officer having the duty to make up the ballot for a local election shall prepare the Spanish translation of ballot material if the governing body of the political subdivision fails to provide a Spanish text.

"Subdivision 4. Bilingual materials for absentee voting. In any countywide election, or in any election held in a political subdivision other than a county, in which bilingual election materials are required at any polling place in the county or other political subdivision, the absentee voting materials shall be printed in both English and Spanish. The forms for applying for an absentee ballot, the ballot envelopes and carrier envelopes, and any other instructions or forms furnished to the voters shall be printed in English with a Spanish translation on the face of the instrument or furnished

separately along with the instrument. All ballots and ballot labels used for absentee voting shall be printed in the manner described in Subdivision 3; and whenever the Spanish translation of ballot propositions is printed separately from the ballot, a copy of the translation shall be furnished to each voter who votes by mail. In the conduct of absentee voting by personal appearance, any other materials enumerated in Subdivision 3 which are used in the voting shall be in bilingual form.

"Subdivision 5. Optional use of bilingual materials. In any election held in a county to which Subdivision 1 of this section does not apply, or at any polling place where bilingual materials are not made mandatory under Subdivision 1, the governing body of the political subdivision responsible for the costs of the election may require the use of bilingual ballots and such other items of election materials enumerated in Subdivisions 3 and 4 as the governing body specifies, for any or all of the polling places as specified by the governing body; and the election officers of the political subdivision shall furnish bilingual materials in accordance with the resolution, ordinance, or other document by which their use is required. The governing body may provide for use of the bilingual materials on a continuing basis or on an election-by-election basis, as it sees fit."

Sec. 2. The Texas Election Code is amended by adding Section 45c to read as follows:

"45c. Voter registration application forms in Spanish.

"The secretary of state shall prescribe a voter registration application form that is printed in Spanish. In each county in which five percent or more of the inhabitants are persons of Spanish origin or descent, according to the last preceding federal decennial census, the registrar shall keep a supply of these, and

shall keep a notice in Spanish posted at the place in his office where voter registration is conducted, stating that application forms in Spanish are available. Registrars in other counties may also use this form if they wish to do so. Every registrar in the state is required to accept and process applications that are tendered to him on the bilingual form, in the same manner as other applications."

Sec. 3. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended, and that this Act take effect and be in force from and after its passage, and it is so enacted.

(Exhibit G)

(SUMMONS OMITTED)

(HEADING OMITTED)

**APPLICATION FOR TEMPORARY
RESTRAINING ORDER**

Plaintiffs, Dolph Briscoe, Governor of the State of Texas, and Mark White, the Secretary of State of the State of Texas, move the Court for a Temporary Restraining Order enjoining Defendants from publishing any determination concerning the State of Texas in the Federal Register pursuant to the provisions of Section 4 of the Voting Rights Act of 1965, 42 U.S.C. §1973 *et seq.* as amended by Pub. L. No. 94-73 (Act), on the grounds that:

1. The Act provides that Defendants Barabba and Levi make the following determinations:

a. Section 4(b) provides in part that:

"(b) The provisions of subsection (a) shall apply in any State or in any political subdivision of a State which (1) the Attorney General determines maintained on November 1, 1964, any test or device, and with respect to which (2) the Director of the Census determines that less than 50 per centum of the persons of voting age residing therein were registered on November 1, 1964, or that less than 50 per centum of such persons voted in the presidential election of November, 1964. On and after August 6, 1970, in addition to any State or political subdivision of a State determined to be subject to subsection (a) pursuant to the previous sentence, the provisions of subsection (a) shall apply in any State or any political subdivision of a State which (i) the Attorney General determines

maintained on November 1, 1968, any test or device, and with respect to which (ii) the Director of the Census determines that less than 50 per centum of the persons of voting age residing therein were "registered on November 1, 1968, or that less than 50 per centum of such persons voted in the presidential election of November 1968. On or after August 6, 1975, in addition to any State or political subdivision of a State determined to be subject to subsection (a) pursuant to the previous two sentences, the provisions of subsection (a) shall apply in any State or any political subdivision of a State which (i) the Attorney General determines maintained on November 1, 1972, any test or device, and with respect to which (ii) the Director of the Census determines that less than 50 per centum of the citizens of voting age were registered on November 1, 1972, or that less than 50 per centum of such persons voted in the presidential election of November 1972."

b. Section 4(f)(3) provides that:

"(3) In addition to the meaning given the term under section 4(c), the term "test or device" shall also mean any practice or requirement by which any State or political subdivision provided any registration or voting notices, forms, instructions, assistance, or other materials or information relating to the electoral process, including ballots, only in the English language, where the Director of the Census determines that more than 5 per centum of the citizens of voting age residing in such State or political subdivision are members of a single language minority. With respect to section 4(b), the term "test or device", as defined

in this subsection, shall be employed only in making the determinations under the third sentence of that section."

c. Section 4(d) provides that:

"(d) For purposes of this section no State or political subdivision shall be determined to have engaged in the use of tests or device for the purpose or with the effect of denying or abridging the right to vote on account of race or color, or in contravention of the guarantees set forth in section 4(f)(2) if (1) incidents of such use have been few in number and have been promptly and effectively corrected by State or local action, (2) the continuing effect of such incidents has been eliminated, and (3) there is no reasonable probability of their recurrence in the future."

d. Section 203(b) provides that:

"(b) Prior to August 6, 1985, no State or political subdivision shall provide registration or voting notices, forms, instructions, assistance, or other materials or information relating to the electoral process, including ballots, only in the English language if the Director of the Census determines (i) that more than 5 percent of the citizens of voting age of such State or political subdivision are members of a single language minority and (ii) "that the illiteracy rate of such persons as a group is higher than the national illiteracy rate: Provided, That the prohibitions of this subsection shall not apply in any political subdivision which has less than five percent voting age citizens of each language minority which comprises over five percent of the

statewide population of voting age citizens. For purposes of this subsection, illiteracy means the failure to complete the fifth primary grade. The determinations of the Director of the Census under this subsection shall be effective upon publication in the Federal Register and shall not be subject to review in any court."

2. Plaintiffs have proffered to Defendants evidence that, under the sections of the Act under which Defendants are required to determine whether, *inter alia*, the State of Texas is covered by the Act, Defendants cannot, as a matter of fact and of law, determine the State of Texas to be so covered.

3. Defendants have rejected each and every proffer of evidence showing that the State of Texas is not covered by the Act, rejecting one such proffer as late as September 4, 1975. (See Affidavit of Plaintiff Mark White at page 3).

4. Defendants have advised Plaintiffs that, without receiving Plaintiffs proffered evidence of non-coverage under the Act, Defendants will publish determinations required by the Act as set forth above, concerning the State of Texas, beginning September 9, 1975 in the *Federal Register*.

5. Plaintiffs have no remedy at law in that Section of the Act provides:

"A determination or certification of the Attorney General or of the Director of the Census under this section or under section 6 or section 13 shall not be reviewable in any court and shall be effective upon publication in the Federal Register."

6. Plaintiffs will be irreparably harmed unless immediate injunctive relief is granted in that an unreviewable determination of coverage under the Act

will make impractical the preparations undertaken in administration of an election on a proposed Constitution to be held in the State of Texas on November 4, 1975.

7. Plaintiffs show a strong likelihood of success on the merits as set forth in the accompanying Memorandum of Points and Authorities in support of this Application.

WHEREFORE, Plaintiffs pray that the Court enjoin and restrain Defendants, and each of them individually and in his official capacity, his agents and others acting in concert with him, *pendent lite*, from taking any action to publish in the *Federal Register* or otherwise, any of the determinations required by the Act and set forth above.

(Signatures Omitted)

(CERTIFICATE OF SERVICE OMITTED)

***** (MEMORANDUM BRIEF OMITTED)

***** (SUPPLEMENTAL MEMORANDUM
OF AUTHORITIES OMITTED)

(HEADING OMITTED)

MOTION TO DISMISS

Pursuant to Rule 12(b)(1) and (6), Federal Rules of Civil Procedure, defendants Edward H. Levi, *et al.*, move for dismissal of this action because the Court lacks jurisdiction over the subject matter of this action and because the complaint fails to state a claim upon which relief can be granted.

Defendants' memorandum is attached setting out the reasons and authorities supporting this motion.

Respectfully submitted,

BY S/S

EARL SILBERT
United States Attorney

BRIAN K. LANDSBERG
CYNTHIA L. ATTWOOD
JAMES KIECKHEFER
Attorneys,
Department of Justice,
Washington, D.C. 20530
739-2195

(HEADING OMITTED)

ORDER

This cause came on to be heard on Motion of Plaintiff for a Preliminary Injunction, and on motion of Defendants to dismiss.

Upon consideration of evidence and issues presented in legal memoranda and affidavits, and at hearing before this Court on September 12, 1975, this Court concludes that Plaintiffs' motion for preliminary injunction should be denied and that Defendants' motion to dismiss should be granted.

IT IS THEREFORE ORDERED by the Court that Plaintiffs' motion for preliminary injunction be denied.

IT IS FURTHER ORDERED that Defendants' motion to dismiss be granted, and the action is hereby dismissed with prejudice.

DATED: _____, 1975.

UNITED STATES
DISTRICT JUDGE

* * *

**MEMORANDUM OF FEDERAL DEFENDANTS
IN OPPOSITION TO PLAINTIFFS' MOTION
FOR A PRELIMINARY INJUNCTION AND IN
SUPPORT OF DEFENDANTS' MOTION TO
DISMISS. (NOT REPRODUCED IN ITS
ENTIRETY)**

**AN EXHIBIT ATTACHED TO THE
MEMORANDUM**

DEPARTMENT OF COMMERCE

Bureau of the Census

VOTING RIGHTS ACT AMENDMENT OF 1975

Determinations Under Title III

In accordance with the requirements of Section 203 of the Voting Rights Act of 1965 (42 U.S.C. 1973, et seq., as amended by the Voting Rights Act Amendment of 1975, Public Law 94-73) the Bureau of the Census has determined that the political subdivisions in the following table have more than five percent of their citizen population of a specified language minority group and meet the requirement for coverage under Title III of the Act Amendment for that minority. Determinations for additional subdivisions in these and other States will appear in later issues of the FEDERAL REGISTER.

Dated: September 3, 1975

VINCENT P. BARABBA
Director,
Bureau of the Census.

States or Political Subdivisions Covered Under Title
III, of the Voting Rights Act Amendment of 1975

*State or Political
Subdivision*

*Specified language
minority¹*

* * *

Texas(statewide)	
Andrews County	Spani
Aransas County	Do.
Atacosa County	Do.
Bailey County	Do.
Bastrop County	Spanish
Bee County	Do.
Bell County	Do.
Bexar County	Do.
Blanco County	Do.
Borden County	Do.
Brazoria County	Do.
Brazos County	Do.
Briscoe County	Do.
Brooks County	Do.
Burleson County	Do.
Caldwell County	Do.
Calhoun County	Do.
Cameron County	Do.
Castro County	Do.
Cochran County	Do.
Coke County	Do.
Colorado County	Do.
Comal County	Do.
Concho County	Do.
Cottle County	Do
Crockett County	Do.
Crosby County	Do.
Culberson County	Do.
Dallam County	Do.
Dawson County	Do.
Deaf Smith County	Do.
DeWitt County	Do.

* * *

<i>State or Political Subdivision</i>	<i>Specified language minority¹</i>
Dimmit County	Do.
Duval County	Do.
Ector County	Do.
Edwards County	Do.
Ellis County	Do.
El Paso County	Do.
Falls County	Do.
Fisher County	Do.
Floyd County	Do.
Foard County	Do.
Fort Bend County	Do.
Frio County	Do.
Gaines County	Do.
Galveston County	Do.
Garza County	Do.
Glasscock County	Do.
Goliad County	Do.
Gonzales County	Do.
Grimes County	Do.
Guadalupe County	Do.
Hale County	Do.
Hansford County	Do.
Harris County	Do.
Haskell County	Do.
Hays County	Do.
Hidalgo County	Do.
Hockley County	Do.
Howard County	Do.
Hudspeth County	Do.
Jackson County	Do.
Jeff Davis County	Do.

<i>State or Political Subdivision</i>	<i>Specified language minority¹</i>
Jim Hogg County	Do.
Jim Wells County	Do.
Jones County	Do.
Karnes County	Do.
Kendall County	Do.
Kenedy County	Do.
Kerr County	Do.
Kimble County	Do.
Kinney County	Do.
Kleberg County	Do.
Lamb County	Do.
Lampasas County	Do.
La Salle County	Do.
Live Oak County	Do.
Lubbock County	Do.
Lynn County	Do.
McCulloch County	Do.
McMullen County	Do.
Martin County	Do.
Mason County	Do.
Matagorda County	Do.
Maverick County	Do.
Medina County	Do.
Menard County	Do.
Midland County	Do.
Milam County	Spanish
Mitchell County	Do.
Nolan County	Do.
Nueces County	Do.
Parmer County	Do.
Pecos County	Do.
Presidio County	Do.
Real County	Do.
Reeves County	Do.
Refugio County	Do.
Robertson County	Do.

* * *

<i>State or Political Subdivision</i>	<i>Specified language minority¹</i>
Runnels County	Do.
San Patricio County	Do.
San Saba County	Do.
Schleicher County	Do.
Scurry County	Do.
Sherman County	Do.
Starr County	Do.
Sterling County	Do.
Sutton County	Do.
Swisher County	Do.
Taylor County	Do.
Terrell County	Do.
Terry County	Do.
Tom Green County	Do.
Travis County	Do.
Upton County	Do.
Uvalde County	Do.
Val Verde County	Do.
Victoria County	Do.
Ward County	Do.
Webb County	Do.
Wharton County	Do.
Willacy County	Do.
Williamson County	Do.
Wilson County	Do.
Winkler County	Do.
Yoakum County	Do.
Zapata County	Do.
Zavala County	Do.

¹Generally jurisdictions in which more than 5 percent of the citizen population are members of a language minority and the illiteracy rate is greater than the national rate.

* * *

AN EXHIBIT ATTACHED TO THE MEMORANDUM OF FEDERAL DEFENDANTS IN OPPOSITION TO PLAINTIFFS' MOTION FOR A PRELIMINARY INJUNCTION AND IN SUPPORT OF DEFENDANTS' MOTION TO DISMISS. (MEMORANDUM IS NOT REPRODUCED IN ITS ENTIRETY)

DEPARTMENT OF JUSTICE

Washington, D.C. 20530

Honorable Dolph Briscoe
Governor
State Capitol
Austin, Texas 78711

Dear Governor Briscoe:

On August 6, 1975, the Voting Rights Act Amendments of 1975, Public Law 94-73, were signed by the President. This law places new and important responsibilities upon States and their political subdivisions, and upon the U.S. Attorney General. As part of our responsibilities for the implementation and enforcement of the Voting Rights Act of 1965, as now amended, we have sent copies of the attached material to the chief executive and the legal and election officials in political subdivisions of your State which are listed in the attachment.

If you have any questions regarding the 1975 Amendments, and their effect upon political subdivisions within your State, please contact me. Mr. Barry Weinberg, Deputy Chief, Voting Section of the

Civil Rights Division (202-739-3168) will be happy to answer any inquiries which your staff may have.

Sincerely,

By S/S

J. Stanley Pottinger
Assistant Attorney General
Civil Rights Division

cc: State Attorney General
Secretary of State

TEXAS

The attached letter was sent to the following counties in reference to their Spanish Heritage language minority.

Anderson	Freestone	Madison
Angelina	Gray	Marion
Archer	Grayson	Martin
Armstrong	Gregg	Mason
Austin	Hamilton	Matagorda
Baylor	Hardeman	Maverick
Bosque	Hardin	Medina
Bowie	Harrison	Mills
Brown	Hartley	Montague
Callahan	Henderson	Montgomery
Camp	Hill	Morris
Carson	Hood	Nacogdoches
Cass	Hopkins	Navarro
Chambers	Houston	Newton
Cherokee	Hunt	Ochiltree
Childress	Hutchinson	Oldham
Clay	Jack	Orange
Coleman	Jasper	Palo Pinto
Collin	Jefferson	Panola
Collingsworth	Johnson	Parker
Comanche	Kaufman	Polk
Cooke	King	Rains
Cottle	Lamar	Randall
Dallam	Lavaca	Red River
Delta	Lee	Roberts
Denton	Leon	Rockwall
Donley	Liberty	Rusk
Eastland	Limestone	Sabine
Erath	Lipscomb	San Augustine
Fannin	Llano	Shackelford
Fayette	McLennan	Shelby
Franklin	McMullen	Smith

Somervell	Tyler	Wheeler
Stephens	Upshur	Wichita
Stonewall	Van Zandt	Wilbarger
Tarrant	Walker	Wise
Titus	Waller	Wood
Trinity	Washington	Young

DEPARTMENT OF JUSTICE

Washington, D.C. 20530

On August 6, 1975, the Voting Rights Act Amendments of 1975, Public Law 94-73, were signed by the President. Because our preliminary analysis indicates that your jurisdiction will be affected by this legislation, I wish to direct your attention to the major provisions of the new law, which we recognize are complex, and request that you provide us with the information necessary for the Attorney General to make certain determinations required by law. A copy of the Voting Rights Act of 1965, as amended by the Voting Rights Act Amendments of 1970 and 1975, is included.

The 1975 Amendments extend for seven years the coverage of the certain jurisdictions under the so-called "special" provisions¹ of the Voting Rights Act of 1965, and make permanent the nationwide ban on the use of literacy and similar tests. In addition, *Section 4* of the Act as now amended expands the coverage formula for the "special" provisions of the Act to states and political

¹The special provisions of the Act consist of (1) Attorney General power to dispatch examiners to register voters; (2) same with regard to observers to watch election day activities; and (3) the requirement that all covered states and counties submit new election laws to the Attorney General or the federal district court in D.C. for approval.

subdivisions in which: (1) more than 5% of the citizens of voting age were members of a "language minority"² on November 1, 1972; (2) election and registration materials were offered only in English; and (3) less than 50% of the voting age citizens were registered to vote or voted in November, 1972. Determinations as to coverage under this formula are to be made by the Director of the Census and the Attorney General; are effective upon publication in the Federal Register; and are not reviewable in any court.

Jurisdictions covered by operation of Section 4 are now required to provide "any registration or voting notices, forms, instructions, assistance, or other materials or information relating to the electoral process, including ballots" in the language of the applicable language minority in addition to English. (Section 4 (f) (4))³In Addition, jurisdictions covered by Section 4 are subject to the "special" preclearance and federal examiner and observer provisions of the Act (Sections 5-9, 13, 14. See footnote 1 above.). Such jurisdictions may seek to terminate Section 4 coverage by bringing an appropriate action for declaratory judgment before the United States District Court for the District of Columbia (Section 4a).⁴

²Defined by the Amendments as "persons who are American Indian, Asian American, Alaskan Natives or of Spanish heritage."

³If the language minority's language is unwritten, the covered jurisdiction is required to provide oral assistance.

⁴In a similar but distinct requirement, the Act as now amended in *Section 203* bans for ten years English-only elections in states and political subdivisions where over 5% of the voting age citizens are members of any single "language minority" which has an illiteracy rate greater than the nationwide illiteracy rate. A jurisdiction which is designated by this *Section 203* formula is required to provide the same bilingual registration and election assistance as required by Section 4.

Although the Director of the Bureau of the Census has not yet published his determinations under the Amendments, preliminary data indicate that your jurisdiction falls within the Section 4 coverage formula of the Amendments with regard to the language minority group(s) referenced at the beginning of this letter.⁵

In order that we may determine, as required by Section 4 of the Amendments, whether your jurisdiction provided election and registration materials in only the English language in 1972, I am requesting that you inform me in writing within ten days of receipt of this letter whether your jurisdiction provided election and registration materials bilingually in November, 1972. If your jurisdiction provided such materials bilingually, please include supporting evidence to that effect.

If your jurisdiction is determined finally to be covered by Section 4, the requirements for provisions of bilingual election and registration materials become effective immediately upon our publishing in the Federal Register the list indicating that your jurisdiction is covered. We are presently drafting interim guidelines, which will also be published in the Federal Register shortly, outlining the Department's interpretation of the bilingual election requirements of the Amendments. The interim guidelines are intended for use by covered jurisdictions in complying with the requirements of the two Amendments until permanent guidelines are published. Permanent guidelines may modify the interim guidelines, and comments on your experience with the interim guidelines are therefore solicited. As soon as the interim guidelines are prepared for publication, a copy will be sent to you. We will also

⁵See my attached letter to Vincent Barabba, Director, Bureau of the Census, outlining in detail the procedures to be used in making these determinations.

send you a copy of the determinations of the Director of the Census and the Attorney General which, as I have indicated, will be published in the Federal Register. Procedures for the Administration of Section 5 of the Voting Rights Act of 1965, a copy of which is enclosed, are already published in Title 28 Code of Federal Regulations, Part 51.⁶

If you have any questions regarding the 1975 Amendments, and their effect upon your jurisdiction, please contact Mr. Barry Weinberg, Deputy Chief, Voting Section of the Civil Rights Division (202-739-3168). In addition, we would appreciate your informing us of any upcoming elections in your jurisdiction which could be affected by the new amendments.

Sincerely,

By S/S

J. Stanley Pottinger
Assistant Attorney General
Civil Rights Division

⁶These procedures will require some technical amendments to conform to the 1975 Amendments. Their substance, however, will remain the same.

TEXAS

The attached letter has been sent to the following counties in your state in reference to their Spanish Heritage language minority.

Andrews	Dallas	Hemphill
Aransas	Dawson	Hidalgo
Atascosa	Deaf Smith	Hockley
Bailey	DeWitt	Howard
Bandera	Dickens	Hudspeth
Bastrop	Dimmit	Irion
Bee	Duval	Jackson
Bell	Ector	Jeff Davis
Bexar	Edwards	Jim Hogg
Blanco	Ellis	Jim Wells
Borden	El Paso	Jones
Brazoria	Falls	Karnes
Brazos	Fisher	Kendall
Brewster	Floyd	Kenedy
Briscoe	Foard	Kent
Brooks	Fort Bend	Kerr
Burleson	Frio	Kimble
Burnet	Gaines	Kinney
Caldwell	Galveston	Kleberg
Calhoun	Garza	Knox
Cameron	Gillespie	Lamb
Castro	Glasscock	Lampasas
Cochran	Goliad	La Salle
Coke	Gonzales	Live Oak
Colorado	Grimes	Loving
Comal	Guadalupe	Lubbock
Concho	Hale	Lynn
Coryell	Hall	McCullough
Crane	Hansford	Menard
Crockett	Harris	Midland
Crosby	Haskell	Milam
Culberson	Hays	Mitchell

Moore	San Saba	Upton
Motley	Schleicher	Uvalde
Nolan	Scurry	Val Verde
Nueces	Sherman	Victoria
Parmer	Starr	Ward
Pecos	Sterling	Webb
Potter	Sutton	Wharton
Presidio	Swisher	Willacy
Reagan	Taylor	Williamson
Real	Terrell	Wilson
Reeves	Terry	Winkler
Refugio	Throckmorton	Yoakum
Robertson	Tom Green	Zapata
Runnels	Travis	Zavala
San Patricio		

DEPARTMENT OF JUSTICE

Washington, D.C. 20530

On August 6, 1975, the Voting Rights Act Amendments of 1975, Public Law 94-73, were signed by the President. Because our preliminary analysis indicates that your jurisdiction will be affected by this legislation, I wish to direct your attention to the major provisions of the new law, which we recognize are complex, and request that you provide us with the information necessary for the Attorney General to make certain determinations required by law. A copy of the Voting Rights Act of 1965, as amended by the Voting Rights Act Amendments of 1970 and 1975, is included.

The 1975 Amendments extend for seven years the coverage of certain jurisdictions under the so-called "special" provisions ¹of the Voting Rights Act of 1965, and make permanent the nationwide ban on the use of literacy and similar tests. In addition, *Section 4* of the Act as now amended expands the coverage formula for the "special" provisions of the Act to the states and political subdivisions in which: (1) more than 5% of the citizens of voting age were members of a "language minority" ²on November 1, 1972; (2) election and

¹The special provisions of the Act consists of (1) Attorney General power to dispatch examiners to register voters; (2) same with regard to observers to watch election day activities; and (3) the requirement that all covered states and counties submit new election laws to the Attorney General or the federal district court in D.C. for approval.

²Defined by the Amendments as "persons who are American Indian, Asian American, Alaskan Natives or of Spanish heritage."

registration materials were offered only in English; and (3) less than 50% of the voting age citizens were registered to vote or voted in November, 1972. Determinations as to coverage under this formula are to be made by the Director of the Census and the Attorney General; are effective upon publication in the Federal Register; and are not reviewable in any court.

Jurisdictions covered by operation of *Section 4* are now required to provide "any registration or voting notices, forms, instructions, assistance, or other materials or information relating to the electoral process, including ballots" in the language of the applicable language minority in addition to English. (*Section 4 (f) (4)*)³. In addition, jurisdictions covered by *Section 4* are subject to the "special" preclearance and federal examiner and observer provisions of the Act (*Sections 5-9, 13, 14*. See footnote 1 above.). Such jurisdictions may seek to terminate *Section 4* coverage by bringing an appropriate action for declaratory judgment before the United States District Court for the District of Columbia (*Section 4a*).

In a similar but distinct requirement, the Act as now amended in *Section 203* bans for ten years English-only elections in states and political subdivisions where over 5% of the voting age citizens are members of any single "language minority" which has an illiteracy rate greater than the nationwide illiteracy rate. Illiteracy under the Act is defined as a failure to complete the fifth primary grade. Census figures indicate that the national illiteracy rate under this standard appears to be 4.6%.

The Director of the Census is required to certify those jurisdictions which are covered by operation of this

³If the language minority's language is unwritten, the covered jurisdiction is required to provide oral assistance.

Section 203 formula, and his determinations are effective upon publication in the Federal Register and are not reviewable in any court of law. A jurisdiction which is designated by this Section 203 formula is required to provide "any registration or voting notices, forms, instructions, assistance, or other materials or information relating to the electoral process, including ballots" in the language of the applicable language minority in addition to English. (Section 203 (c)). However, a jurisdiction covered by operation of this formula alone is not subject to the "special" preclearance and federal examiner and observer provisions under Section 4 of the amended Act, ⁴ and may seek to terminate the coverage of Section 203 by proving in an action for declaratory judgment in a federal district court that the illiteracy rate of the applicable language minority group in the jurisdiction has become equal to or less than the nationwide illiteracy rate.

The bilingual election requirements contained in Sections 4 and 203 are virtually identical; therefore, standards for compliance with these two sections will be the same, and compliance with one will satisfy both. Please note, however, that a jurisdiction covered by both formulae--as yours appears to be--would be required to terminate coverage under both sections in order to terminate its duty to provide bilingual election and registration materials.

Although the Director of the Bureau of the Census has not yet published his final determinations under the Amendments, preliminary data indicate that your jurisdiction falls within both the Section 4 and 203 coverage formulae of the Amendments with regard to

⁴See footnote 1 above.

the language minority group(s) referenced at the beginning of this letter.⁵

In order that we may determine, as required by Section 4 of the Amendments, whether your jurisdiction provided election and registration materials in only the English language in 1972, I am requesting that you inform me in writing within ten days of receipt of this letter whether your jurisdiction provided election and registration materials bilingually in November, 1972. If your jurisdiction provided such materials bilingually, please include supporting evidence to that effect.

If your jurisdiction is determined finally to be covered by either Section 4 or 203, the requirements for provision of bilingual election and registration materials become effective immediately upon our publishing in the Federal Register the list indicating that your jurisdiction is covered. We are presently drafting interim guidelines, which will also be published in the Federal Register shortly, outlining the Department's interpretation of the bilingual election requirements of the two Amendments. The interim guidelines are intended for use by covered jurisdictions in complying with the requirements of the Amendments until permanent guidelines are published. Permanent guidelines may modify the interim guidelines, and comments on your experience with the interim guidelines are therefore solicited. As soon as the interim guidelines are prepared for publication, a copy will be sent to you. We will also send you a copy of the determinations of the Director of the Census and the Attorney General which, as I have indicated, will be published in the Federal Register. Procedures for the Administration of Section 5 of the Voting Rights Act of

⁵See my attached letter to Vincent Barabba, Director, Bureau of the Census, outlining in detail the procedures to be used in making these determinations.

1965, a copy of which is enclosed, are already published in Title 28 Code of Federal Regulations, Part 51.⁶

If you have any questions regarding the 1975 Amendments, and their effect upon your jurisdiction, please contact Mr. Barry Weinberg, Deputy Chief, Voting Section of the Civil Rights Division (202--739-3168). In addition, we would appreciate your informing us of any upcoming elections in your jurisdiction which could be affected by the new amendments.

Sincerely,

By S/S

J. Stanley Pottinger
Ast. Attorney General
Civil Rights Division

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AN EXHIBIT ATTACHED TO THE MEMORANDUM OF FEDERAL DEFENDANTS IN OPPOSITION TO PLAINTIFF'S MOTION FOR A PRELIMINARY INJUNCTION AND IN SUPPORT OF DEFENDANTS' MOTION TO DISMISS. (MEMORANDUM IS NOT REPRODUCED IN ITS ENTIRETY)

ATTACHMENT 5
ANALYSIS OF VOTING PARTICIPATION IN 1964
IN STATES COVERED BY FY 1965 VRA

1965 Covered States	1964 VAP ¹	1964 Voted ²	1964 % VAP Voted ¹	1964 No. Reg. ³	1964 % of VAP Reg.	1964 % Reg. Who Voted
Alabama	1,919,000	689,817	35.9	NA	--	--
Alaska	153,000	67,259	43.9	NA	--	--
Georgia	2,634,000	1,139,157	43.3	1,669,778	63.4%	68.2%
Louisiana	1,894,000	896,293	47.3	1,202,056 (86.3 White)	63.5%	74.6%
Mississippi	1,207,000	409,146	33.9	NA	--	--
South Carolina	1,333,000	524,756	39.4	772,572	58.0%	67.9%
Virginia	2,539,000	1,042,267	41.1	1,305,383	51.4%	79.8%

¹Series P-25, No. 526, U.S. Dept. of Commerce, *Current Population Reports*, "Projections of Population of Voting Age for States: Nov. 1974," Tables 3-4.

²*Statistics of Presidential and Congressional Election of Nov. 3, 1964*, Compilation by Clerk of U.S. House of Representatives; U.S. Gov't Printing Office, Washington 1965: 60-2140.

³Official State Reports of Registration Statistics provided to Justice Department by Secretaries of State.

CONTINUED IN VOLUME II